IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

RFA No.19 of 2002

Reserved on : 13.7.2007

Date of Decision : July 23, 2007

State of H.P. & another …Appellants.

Versus:

Tulsi Ram & others …Respondents.

***Coram*:**

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] *No*

For the appellants : Mr. C. B. Singh, Deputy Advocate General.

For the respondents. Mr. D. N. Ronta, Advocate.

Sanjay Karol, J.

The present appeal is filed against the impugned award dated 29.4.2000 passed by the Addl. District Judge, Shimla, H. P. in Land Ref. Case No. 9-S/4 of 1989 titled as Het Ram Vs. State of H.P. through LAC.

On 3.8.1985, the State of Himachal Pradesh initiated proceedings for acquisition of the claimant- respondent's land bearing khasra Nos. 50/1 and 58/1 measuring 1-0 bigha situated in Chak Kaljar, Tehsil Theog, District Shimla, by issuing notification under Section 4 of the Land Acquisition Act, 1894

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

(hereinafter referred to as 'the Act'). The acquisition proceedings culminated in passing of the award dated 29.4.2000. Being dissatisfied with the compensation awarded, the petitioner-respondent filed a land reference petition under Section 18 of the Act.

On the pleadings of the parties, the Court below framed the following issues:-

"1. Whether the petitioner is entitled to enhancement of compensation as claimed in the petition? .....OPP

2. Whether the petitioner is entitled to interest as claimed? .....OPP"

Seven witnesses were examined by the claimant-respondents and one witness was examined by the appellants.

The reference petition was answered in terms of the award dated 27.9.1991. However, the same was set aside by this Court in RFA No. 397 of 1992 in terms of the order dated 31.5.1999, when the matter was remanded back to the Court for fresh adjudication and determination.

The issues have been decided in favour of the respondent-appellants in terms of the impugned award.

Chak-Kalinda, having a township is adjacent to and at a distance of 250 mtrs. from Chak-Kaljar. For the same public purposes i.e. construction of road, land in Chak Mul-Matiana adjacent to Chak Kalinda was also acquired for which the valuation has been carried out relying upon sale transactions pertaining to Chak Kalinda. The claimant is thus discriminated in

the matter of determination of the market value of the land belonging to him and similarly situated land owners.

Shri Tulsi Ram (PW-1) has stated that in Chak Kaljar, no sale instances had taken place for the last 30 years except for one solitary instance of sale of an inferior quality and that too, long ago. According to him, Chak Kaljar is not only adjacent to Chak Kalinda but has a better quality of land and is hardly at a distance of 250 mtrs. from the township of Kalinda. Further, Chak Mul-Matiana is also adjacent to Chak Kalinda. The State has awarded compensation with regard to the land acquired in Chak Mul-Matiana on the basis of the valuation of the land of Chak Kalinda. Land in Matiana is in the interior whereas Kalinda is adjacent to Hindustan Tibet Road.

Shri Joginder Singh (PW-2) Patwari of the acquired land has stated that Chak Kalinda is adjacent to the acquired land and the same is just about 250 yards away from Hindustan Tibet Road whereas Chak Mul-Matiana is about one and half kilometers away from the said road. He has exhibited Ex.PA, average five years sale price of Chak Kalinda and Chak Kaljar and has certified Exts. PC & PD to be correct. According to him, Ext.PC is far away from Hindustan Tibet Road and Kaljar has better potentiality than the land at Kalinda.

Shri Tulsi Ram (PW-3) son of the claimant on oath has stated that he used to grow vegetables and the total yield was approximately 120 bags of cabbage and 20 to 22 bags of

peas in a year, valuation of which comes to approximately Rs.40,000/- per annum.

Shri Hari Chand (PW-4) Pradhan Gram Panchayat, Matiana, has stated that village Kaljar is situated at a distance of 300 meters away from Matiana bazar and is developing in the shape of township. According to him, no sale transactions, in his presence, had taken place because the prices of the land are very high. He has denied the suggestions that the land in Kaljar does not have potentiality of growth.

Shri Keshva Nand (PW-5) and Shri Bhagat Ram (PW-6) have reiterated the statement of Shri Tulsi Ram (PW-3). Shri Gurdas Ram (PW-7) has deposed to say that he had purchased the land in Chak Kalinda admeasuring 0-1 biswa for consideration of Rs.95,000/- vide Sale Deed Ext.PW-7/A and the market price of the land was varying between Rs.18,000/- to Rs.30,000/- per biswa. However, due to his cordial relations with the vendor, the transaction is for a sum of Rs.9,500/-.

Shri Darshan Singh (DW-1) Patwari, office of the Land Acquisition Officer, Shimla has admitted that between the year 1981 to 1985, no transaction of sale of land took place in village Kaljar and there are only three sale transactions of land prior to the year 1981, which, however, are not on record. He has exhibited RA, the average sale price certificate. In his cross-examination, he has admitted that village Mul-Matiana, Kalinda and Kaljar are adjoining to each other. He has admitted that the yearly average price of the land is drawn on the basis of the

transactions having taken place within one year before the acquisition and in case no sale transaction took place during that year, the transaction of the adjoining village can be taken into consideration for determination of the market value of the land in village Matiana. According to him, no sale of land of category Bakhal Abbal took place in Kaljar during the year 1981 and only 14 biswas of Bakhal Doem land was sold.

The sole sale deed produced on record being Ext.PW7/A has been disbelieved by the Court below on the ground that the same pertains to a different Chak i.e. Kalinda and there is nothing on record to suggest that the land so sold and the one acquired has similar potentiality and also that it was a solitary instance pertaining to very small chunk of land.

A careful perusal of the statements of the witnesses would show that the acquired land is fertile and cultivable and the claimant was having regular income therefrom. The Court below has come to the conclusion that the claimant would be entitled a sum of Rs.2,16,000/- per bigha for land Bakhal Doem which is the category of land under acquisition.

During the course of hearing, learned Deputy Advocate General fairly stated that based on the evidence adduced by the State, as also Ext.RA i.e. the average price certificate, it can be fairly stated that the average price of the land easily works out to be Rs.8,000/- per biswa. The land in question has been acquired for the purpose of construction of Matiana-Mohri link road in Tehsil Theog, District Shimla. It has

come on record that different parts of the land were acquired in different Chaks. The grievance of the respondents, in my view, is totally justifiable. As the State has taken into account the average price of Chak Kalinda for the purpose of awarding compensation in Chak Matiana, therefore, why should the respondents be deprived of a compensation at a fair market value when not only the acquired land is of better quality but also acquired for the same public purpose. It has also come on record that the land of Chak Kaljar is closer to the Hindustan Tibet Road and also to the township of Kalinda. Certainly, the acquired land has great potentiality of growth as the acquired land in Chak Kaljar is at a distance of 250 mtrs. where the township is expanding in Chak Kalinda.

The Apex Court in ***Krishi Utpadan Mandi Samiti, Sahaswan*** v. ***Bipin Kumar*** *(*2004(2) SCC 283) has noticed the fact that the prices of land are ever increasing and there is an onward trend of increase of 10% to 15% in the land price. This factor of land can be considered to be relevant for the proper adjudication of the price. Instance of solitary sale pertaining to a small chunk of land may not be a determination factor but the same can certainly be considered to be indicative of the market trend. The price in terms of the said sale deed also comes to Rs.95,000/- per biswa.

For all the aforesaid reasons, I am of the considered view that the amount of compensation awarded to the petitioner-respondents for the acquired land is absolutely

fair, just and proper. The respondents are poor villagers and have been cultivating the acquired land for the purpose of livelihood and have been getting an income of Rs.30,000/- to Rs.40,000/- per annum.

In view of above, I find no illegality or infirmity in the impugned award dated 29.4.2000 passed by the Addl. District Judge, Shimla, H. P. in Land Ref. Case No. 9-S/4 of 1989 titled as Het Ram Vs. State of H.P. though LAC.

The appeal is accordingly dismissed.

(Sanjay Karol),
Judge.

July 23, 2007.
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